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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. BRANDON WILLIAM GEER, Defendant and Appellant.	E070812 (Super.Ct.No. SWF1707027) OPINION

APPEAL from the Superior Court of Riverside County. John M. Monterosso, Judge. Reversed with directions.

Tasha G. Timbadia, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Warren J. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Brandon William Geer appeals from the judgment entered following his plea of guilty for committing eight counts of robbery (Pen. Code, § 211; counts 1-3, 5-8 & 10)[1] and two counts of attempted robbery (§§ 664/211; counts 4 & 9). The trial court sentenced defendant to 10 years in state prison with 607 days of credit for time served.

Five days after defendant was sentenced, the Legislature enacted section 1001.36, effective June 27, 2018, and amended, effective January 1, 2019. (Added Stats. 2018, ch. 34, § 24; amended Stats. 2018, ch. 1005, § 1.) Section 1001.36 authorizes pretrial diversion for qualifying defendants with mental health disorders. Defendant contends section 1001.36 applies retroactively, and therefore this court must reverse his conviction and remand the matter to the trial court for a hearing on whether he qualifies for mental health diversion under section 1001.36. The People contend section 1001.36 does not apply retroactively, and that, in any event, a remand would be a futile act.

We hold section 1001.36 applies retroactively to this case, even though defendant was already tried, convicted, and sentenced when section 1001.36 became effective. We disagree with the People that remand would be futile. We therefore conditionally reverse the judgment and remand the matter to allow the trial court to conduct a hearing to determine whether defendant is eligible for pretrial mental health diversion under

[1] All future statutory references are to the Penal Code unless otherwise stated.

section 1001.36. If the court determines defendant is not eligible for diversion or if defendant fails to complete diversion, his conviction and sentence shall be reinstated. If defendant successfully completes diversion, the court must dismiss the charges.

II

FACTUAL AND PROCEDURAL BACKGROUND[2]

Between December 12, 2016 and January 11, 2017, defendant committed eight robberies and two attempted robberies of donut stores, breakfast restaurants, and a grocery store during the early morning hours in Riverside County. Many of the victims reported that defendant used a demand note to give him money or cash and had a gun with him, which defendant claimed was an unloaded "BB" gun.

Defendant admitted to committing all of the offenses, took responsibility for his actions, and wrote apology notes to the victims. During the incidents, defendant claimed that he was under the influence of drugs and alcohol and needed money to support his methamphetamine and alcohol addiction. Nonetheless, he reported that he did not blame his drug use for his actions, but rather blamed himself and noted his drug and alcohol use influenced his actions and decisions. He explained that he began self-medicating and abusing drugs and alcohol when his child went to live with his mother. Defendant also stated that at the time of his arrest on January 11, 2017, he had not slept for three or four days straight. He further asserted that most of his adult life he had experienced anxiety,

[2] The factual background is taken from the probation officer's report. Because defendant filed his reply brief without redacting the previously requested material, the court has reconsidered their orders dated February 4 and May 15, 2019, and has determined that the briefs and this court's opinion do not need to be redacted.

depression, and panic attacks. Once he was incarcerated, defendant began receiving medication for his mental issues and took four different medications. Defendant believed that his mental health issues stemmed from physical and emotional abuse perpetrated by his mother and were not associated with abusing illegal substances.

In addition, defendant claimed that he had never received or sought out substance abuse treatment. However, while incarcerated in county jail, he had been accepted into the Residential Substance Abuse Treatment (RSAT) program. Defendant believed the program would benefit him. He reported the program would give him a better chance of staying "'clean'" in the future and provide him a better insight into the reasons why he was abusing illegal substances.

On May 9, 2018, in a plea to the court, defendant pleaded guilty as charged in the first amended information to committing eight robberies and two attempted robberies. The court's indicated sentence was 11 years four months.

Prior to sentencing, defendant filed a statement in mitigation in support of his enrollment in the RSAT program. Defendant requested that the court allow him to complete the RSAT program prior to imposing sentence. He also noted that if he was successful in the program, then the court should find unusual circumstances to sentence him to felony probation. The RSAT program is an estimated six-month program. Defendant's statement in mitigation did not mention any mental health issues.

The sentencing hearing was held on June 22, 2018. The trial court indicated it had read the probation officer's report, the parties' sentencing memorandums, and an RSAT

report or recommendation. The prosecutor argued that defendant was not deserving of probation or the RSAT program, which was a privilege reserved for "those persons who we say this is an appropriate diversion from either a prison or local custody sentence." Defense counsel argued that defendant's conduct was unusual and incomprehensible considering his relatively crime-free life for over 30 years prior to the string of robberies. Defense counsel noted that defendant had been accepted to the RSAT program and was on the wait list. Defense counsel requested that the court allow defendant to complete the RSAT program before sentencing him, so the court could consider that fact in assessing the appropriate amount of prison time or probation. Defendant apologized to his victims and requested the court let him complete the RSAT program. Defendant stated that he was "in the deep holds of drug addiction and depression" at the time and that he "would never, ever harm anyone." He explained that he was "in control, complete control, at the time . . . as far as having a line that [he] would not cross."

The court stated it appreciated defendant's sincere apology, but it did not "make up for the damage that was caused in that one-month period" during defendant's crime spree. The court concluded that a drug treatment program was not appropriate under the circumstances, explaining: "But to come here now and say, 'Please give me a treatment program,' it rings a little hollow in my mind, where it had to get to this point where so many people have to suffer for him to say, 'Give me a treatment program. Give me one that I have to stay in custody for.' I believe he's sincere in asking for this program. I don't doubt his desire to turn his life around. But it really rings hollow considering the

decade-plus of opportunity he had to address this problem. And only after he victimized twelve people in such a terrifying fashion does he ask for treatment. So I appreciate that he's deemed suitable for the program, but it just isn't appropriate in this circumstance. It really isn't. I do know that there will be plenty of opportunities down the road, even state-sponsored opportunities for treatment, no matter what sentence I impose."

The court thereafter denied defendant probation and sentenced him to an aggregate term of 10 years in prison. The court noted that defendant's robberies, although they did not disqualify him from probation, were more serious than others, considering he used a weapon and generated "extreme fear" among his victims. The court also pointed out that defendant, as apparent from the comments of one of his victims at the sentencing hearing, inflicted severe emotional damage, which could not be ignored. Furthermore, the court observed that defendant's crimes involved planning and sophistication. The court acknowledged that defendant's prior performance on probation a decade before was satisfactory, defendant was willing to comply with probation, and defendant demonstrated substantial remorse for his conduct. Nonetheless, the court determined that, on balance, defendant's 10 violent offenses over a one-month period rendered probation inappropriate.

On June 28, 2018, defendant filed a timely notice of appeal.

III

DISCUSSION

Defendant contends section 1001.36, which allows pretrial mental health diversion, applies retroactively to his case and therefore he is entitled to a limited remand for a diversion eligibility hearing pursuant to section 1001.36. We agree.

A. *Pretrial Diversion*

Generally, pretrial diversion suspends criminal proceedings for a prescribed time period, subject to specified conditions. (§§ 1000-1000.1 [drug offense diversion]; 1001.60-1001.62 [bad check diversion]; 1001.71 [parental diversion]; 1001.80 [military diversion]; 1001.81 [repeat theft offense diversion].) Criminal charges normally are dismissed if a defendant successfully completes a diversion program. (§§ 1001.9, 1001.33, 1001.55, 1001.74-1001.75.)

Effective June 27, 2018, the Legislature enacted section 1001.36, which authorizes pretrial diversion for qualifying defendants with mental health disorders. Section 1001.36 defines "'pretrial diversion' [as] the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged *until adjudication* . . . ."[3] (§ 1001.36, subd. (c), italics added.)

Section 1001.36 authorizes the trial court to grant pretrial mental health diversion if the following criteria are satisfied: (1) the trial court is satisfied, based on

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[3] Effective January 1, 2019, the Legislature amended section 1001.36 to prohibit its use if the defendant is charged with murder, voluntary manslaughter, rape, other sex crimes, and other specified charges. However, robbery is not one of the excluded offenses. (§ 1001.36, subd. (b)(2)(A)-(H); Stats. 2018, ch. 1005, § 1.)

evidence from a qualified mental health expert, that the defendant suffers from a recognized mental disorder; (2) the trial court is satisfied the defendant's disorder played a significant role in the commission of the charged offense; (3) in the opinion of a qualified mental health expert, the defendant's mental health symptoms, which motivated criminal behavior, would respond to mental health treatment; (4) the defendant consents to diversion and waives his right to a speedy trial; (5) the defendant agrees to comply with treatment for the disorder as a condition of diversion; and (6) the trial court is satisfied the defendant "will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community." (§ 1001.36, subd. (b)(1)(F).)

In addition to finding the defendant meets these six requirements, the trial court must also find that the recommended inpatient or outpatient mental health treatment program will meet the defendant's specialized mental health treatment needs. (§ 1001.36, subd. (c)(1)(A).) A defendant's criminal proceedings may be diverted no longer than two years. (§ 1001.36, subd. (c)(1)(B)(3).) If the defendant performs unsatisfactorily in diversion, including committing additional crimes, the court may reinstate criminal proceedings. (§ 1001.36, subd. (d).) If the defendant performs satisfactorily in diversion, at the end of the diversion period, the court shall dismiss the defendant's criminal charges. (§ 1001.36, subd. (e).)

B. *Prospective Application Presumption and Inference of Retroactive Intent*

The parties dispute whether section 1001.36 applies retroactively to defendant, whose appeal was pending when the statute took effect. Generally, we presume laws

apply prospectively, rather than retrospectively. (*People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 307 (*Lara*); see *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207-1209.) Under section 3, a newly enacted Penal Code statute is presumed to operate prospectively. Section 3 provides that no part of the Penal Code "is retroactive, unless expressly so declared." (§ 3.) This statute creates a strong presumption of prospective application, codifying the principle that, "'in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the [lawmakers] . . . must have intended a retroactive application.' [Citations.] Accordingly, '"a statute that is ambiguous with respect to retroactive application is construed . . . to be unambiguously prospective."'" (*People v. Brown* (2012) 54 Cal.4th 314, 324; accord, *People v. Buycks* (2018) 5 Cal.5th 857, 880.)

"'But this presumption against retroactivity is a canon of statutory interpretation rather than a constitutional mandate. [Citation.] Therefore, the Legislature can ordinarily enact laws that apply retroactively, either explicitly or by implication. [Citation.] In order to determine if a law is meant to apply retroactively, the role of a court is to determine the intent of the Legislature . . . .'" (*Lara, supra,* 4 Cal.5th at p. 307, quoting *People v. Vela* (2017) 11 Cal.App.5th 68, 72-73.)[4]

[4] Review granted July 12, 2017, S242298, and cause transferred on February 28, 2018, to the Court of Appeal, with directions to vacate and reconsider.

Normally, when there is no savings clause and a statute decreases punishment, it can be inferred the Legislature intended retroactive application, unless the statute states otherwise. (*In re Estrada* (1965) 63 Cal.2d 740, 745 (*Estrada*); *Lara*, *supra*, 4 Cal.5th at p. 307.) Such a statute decreasing punishment may thus be applied retroactively to acts committed before its passage, provided there is no final judgment of conviction. (*Estrada*, at p. 745; *Lara*, at p. 307.) This is referred to as the *Estrada* rule, which "rests on an inference that, in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not."[5] (*People v. Conley* (2016) 63 Cal.4th 646, 657 (*Conley*); see *Lara*, at p. 308; *Estrada*, at pp. 744-745.)

The Supreme Court in *Estrada* explained that: "'A legislative mitigation of the penalty for a particular crime represents a legislative judgment that the lesser penalty or the different treatment is sufficient to meet the legitimate ends of the criminal law. . . . As to a mitigation of penalties, then, it is safe to assume, as the modern rule does, that it was the legislative design that the lighter penalty should be imposed in all cases that subsequently reach the courts.'" (*Estrada*, *supra*, 63 Cal.2d at pp. 745-746.)

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[5] The Supreme Court noted in *Lara* that "[w]e have occasionally referred to *Estrada* as reflecting a 'presumption.' [Citations.] We meant this to convey that ordinarily it is reasonable to infer for purposes of statutory construction the Legislature intended a reduction in punishment to apply retroactively." (*Lara*, *supra*, 4 Cal.5th at p. 308, fn. 5.)

In *Lara*, our high court extended the *Estrada* rule to Proposition 57, holding that the *Estrada* rule applied to the defendant's case, in which he was charged in adult court before Proposition 57 took effect. The court noted that *Estrada*, *supra*, 63 Cal.2d 740 was not directly on point because Proposition 57 does not reduce the punishment for a crime. (*Lara*, *supra*, 4 Cal.5th at pp. 303-304, 309.) However, Proposition 57 benefits juveniles by eliminating the People's ability to file criminal charges against a juvenile directly in a court of criminal jurisdiction, rather than in juvenile court, which generally treats juveniles differently, with rehabilitation as the goal. (*Lara*, at pp. 306-307, 313.) The *Lara* court therefore concluded that *Estrada*'s rationale applied. The court in *Lara* held that the *Estrada* inference of retroactivity applied, because Proposition 57 benefits juveniles who are prosecuted as adults, and the defendant's judgment was not final when Proposition 57 took effect. (*Lara*, at pp. 303-304, 309.)

Defendant argues that the *Estrada* rule applies to section 1001.36 and requires retroactive application because the statute benefits defendants who qualify for mental health diversion. But this does not end the matter. The Supreme Court in *Lara* stated that the Legislature may "'choose to modify, limit, or entirely forbid the retroactive application of ameliorative criminal law amendments if it so chooses.' [Citation.] [*Estrada*, *supra*, 63 Cal.2d 740] 'does not govern when the statute at issue includes a "saving clause" providing that the amendment should be applied only prospectively.'" (*Lara*, *supra*, 4 Cal.5th at p. 312, quoting *Conley*, *supra*, 63 Cal.4th at p. 656.) Furthermore, the absence of an express savings clause requiring prospective application

is not dispositive of the Legislative intent regarding retroactivity. (*People v. DeHoyos* (2018) 4 Cal.5th 594, 601; *Conley*, at pp. 656-657.) This court must therefore determine whether the language of section 1001.36 and the statute's legislative history refute an inference of retroactive application.

C. *Analysis*

Defendant contends that, because section 1001.36 applies retroactively under *Lara*, *supra*, 4 Cal.5th 299, and *Estrada*, *supra*, 63 Cal.2d 740, this court must conditionally reverse his judgment and remand the matter for a diversion hearing under section 1001.36. The People disagree, arguing section 1001.36 does not apply retroactively because the Legislature did not intend such application. The People reason that subdivision (c) expressly limits the application of section 1001.36 to cases which have not been adjudicated. The People argue that in all instances, including defendant's case, once a criminal proceeding has been adjudicated, postponement for diversion is no longer available under the plain language and intent of the statute. But nothing in the statutory language or legislative history of section 1001.36 clearly conveys that the Legislature intended that section 1001.36 not be applied retroactively.

Defendant relies on *People v. Frahs* (2018) 27 Cal.App.5th 784 (*Frahs*),[6] in support of the proposition that section 1001.36 applies retroactively to this case. (*Frahs*,

[6] The Supreme Court granted review of *Frahs*, *supra*, 27 Cal.App.5th 784 on December 27, 2018, S252220, and denied depublication of *Frahs* pending review. Under California Rules of Court rule 8.1115, *Frahs* "has no binding or precedential effect, and may be cited for potentially persuasive value only." (Rule 8.1115(e)(1), eff. July 1, 2016.)

at p. 791.) Division Three of this court in *Frahs* concluded that section 1001.36 applies retroactively because "the Legislature 'must have intended' that the potential 'ameliorating benefits' of mental health diversion [ ] 'apply to every case to which it constitutionally could apply.'" (*Frahs*, at p. 791.) Recently, the Sixth District Court of Appeal, in *People v. Weaver* (2019) 36 Cal.App.5th 1103, 1120-1121, agreed with *Frahs* and concluded that section 1001.36 applies retroactively. The People contend that *Frahs* was wrongly decided. We disagree.

In *Frahs*, a jury found defendant guilty on two counts of robbery. (*Frahs*, *supra*, 27 Cal.App.5th at p. 786.) While the defendant's case was pending on appeal, the Legislature enacted section 1001.36. (*Frahs*, at p. 787.) The defendant argued on appeal that the mental health diversion program available under section 1001.36 should apply retroactively. (*Frahs*, at p. 788.) The court in *Frahs* agreed and conditionally reversed the defendant's conviction and sentence. (*Id*. at pp. 787, 791-793.)

Relying on the retroactivity rationale articulated in *Estrada*, *supra*, 63 Cal.2d 740, the *Frahs* court explained that, "Applying the reasoning of the Supreme Court, we infer that the Legislature 'must have intended' that the potential 'ameliorating benefits' of mental health diversion to 'apply to every case to which it constitutionally could apply.' ([See] *Estrada*, *supra*, 63 Cal.2d at pp. 744-746.) Further, [the defendant's] case is not yet final on appeal and the record affirmatively discloses that he appears to meet at least one of the threshold requirements (a diagnosed mental disorder). Therefore, we will direct the trial court on remand to make an eligibility determination regarding diversion

under section 1001.36. [¶] The Attorney General argues that: 'Subdivision (c) of the statute defines "pretrial diversion" as the "postponement [of] prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication." This language indicates the Legislature did not intend to extend the potential benefits of . . . section 1001.36' as broadly as possible. We disagree. The fact that mental health diversion is available only up until the time that a defendant's case is 'adjudicated' is simply how this particular diversion program is ordinarily designed to operate. Indeed, the fact that a juvenile transfer hearing under Proposition 57 ordinarily occurs prior to the attachment of jeopardy, did not prevent the Supreme Court in *Lara*, *supra*, 4 Cal.5th 299, from finding that such a hearing must be made available to all defendants whose convictions are not yet final on appeal. [¶] Here, although [the defendant's] case has technically been 'adjudicated' in the trial court, his case is not yet final on appeal. Thus, we will instruct the trial court—as nearly as possible—to retroactively apply the provisions of section 1001.36, as though the statute existed at the time [the defendant] was initially charged." (*Frahs, supra,* 27 Cal.App.5th at p. 791.)

However, recently, in *People v. Craine* (2019) 35 Cal.App.5th 744, the Fifth District Court of Appeal disagreed with the reasoning of *Frahs* and held, based on the language of section 1001.36, its legislative history, and other considerations, that "section 1001.36 does not apply retroactively to defendants whose cases have progressed beyond trial, adjudication of guilt, and sentencing." (*Craine,* at pp. 755-760.)

We agree with, and adopt, the reasoning in *Frahs* that *Estrada*, *supra*, 63 Cal.2d 740, requires retroactive application of section 1001.36, even though subdivision (c) of section 1001.36 defines "'pretrial diversion'" as a postponement of prosecution at any point from the accusation through adjudication. That language is insufficient to support a determination by this court that the Legislature intended that the ameliorative benefits of section 1001.36 not apply retroactively to cases where there has been an adjudication, but the conviction was not yet final when section 1001.36 took effect. As the court in *Estrada* explained, the ameliorative benefits of a new criminal statute such as section 1001.36 should be made available to all eligible criminal defendants whose convictions are not yet final. (*Estrada*, at p. 745.)

The People contend that, even if section 1001.36 applies retroactively, defendant's judgment should be affirmed because defendant has not shown he would be eligible for mental health diversion under section 1001.36 and remand would be a futile act. We conclude, to the contrary, that remand is necessary to allow a diversion eligibility hearing under section 1001.36.

As previously noted, section 1001.36 authorizes the trial court to grant pretrial mental health diversion if (1) a qualified mental health expert concludes the defendant suffers from a mental disorder, (2) the defendant's disorder played a significant role in the commission of the charged offense, (3) a qualified mental health expert concludes the defendant would respond to mental health treatment, (4) the defendant consents to diversion and waives his right to a speedy trial, (5) the defendant agrees to comply with

treatment for the disorder as a condition of diversion, and (6) the defendant "will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community." (§ 1001.36, subd. (b)(1)(F).)

Remand for a diversion hearing under section 1001.36 is required here because we cannot conclude based on the record that defendant is unable to demonstrate these eligibility factors. There is evidence defendant may suffer from mental disorders and that those disorders may have played a significant role in his charged crimes. The probation officer's report reveals that after defendant was arrested and incarcerated, he received diagnoses of anxiety and depression. Defendant also acknowledged suffering from mental illness, including anxiety, depression, and panic attacks. Since his incarceration, defendant had been prescribed four different medications to combat his mental illness. Defendant admitted to enduring physical and mental abuse from his mother, who died in an automobile accident in his early 20's and believed that contributed to his instability and behavior. In addition, the record demonstrates that the robberies were committed while defendant was high on methamphetamines, under the influence of alcohol and/or prescription drugs, and sleep-deprived. Furthermore, as the trial court acknowledged, there was no dispute that "addiction played a significant, if not primary[] role" in defendant's crimes.

While this court declines to make factual determinations as to whether defendant has sufficiently demonstrated any of the eligibility factors for mental health diversion under section 1001.36, we conclude there is sufficient evidence in the record to support remanding this matter for the trial court to conduct an eligibility hearing under section 1001.36. We are aware that defendant might not qualify because he has a criminal history that suggests he may pose an unreasonable risk of danger to public safety. However, we are unable to discern whether that risk may be ameliorated by defendant receiving effective treatment. It is thus inappropriate for this court to speculate as to whether the trial court will find defendant eligible for mental health diversion. A conditional remand is therefore necessary because we cannot say as a matter of law, based on the record, that defendant would not be able to establish eligibility for mental health diversion under section 1001.36.

D. *Conditional Reversal and Remand Procedures*

The *Frahs* court adopted a conditional reversal and remand procedure which requires the trial court to "conduct a mental health diversion eligibility hearing under the applicable provisions of section 1001.36." (*Frahs, supra,* 27 Cal.App.5th at p. 792.) "When conducting the eligibility hearing, the court shall, to the extent possible, treat the matter as though [the defendant] had moved for pretrial diversion after the charges had been filed, but prior to their adjudication." (*Ibid*.)

As discussed in *Frahs* and as previously noted, the trial court must first determine whether defendant meets the six criteria under section 1001.36. (*Frahs, supra,* 27

Cal.App.5th at p. 789; § 1001.36, subds. (b)(1)(A)-(F).) "If [the] trial court determines that [the] defendant meets the six requirements, then the court must also determine whether 'the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.' (§ 1001.36, subd. (c)(1)(A).) The court may then grant diversion and refer the defendant to an approved treatment program. (§ 1001.36, subd. (c)(1)(B).) Thereafter, the provider 'shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.' (§ 1001.36, subd. (c)(2).) 'The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years.' (§ 1001.36, subd. (c)(3).) [¶] If the defendant commits additional crimes, or otherwise performs unsatisfactorily in diversion, then the court may reinstate criminal proceedings. (§ 1001.36, subd. (d).) However, if the defendant performs 'satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings.' (§ 1001.36, subd. (e).)" (*Frahs*, at pp. 789-790.)

IV

DISPOSITION

The judgment is conditionally reversed, and the matter is remanded to the trial court with directions to conduct a diversion eligibility hearing under section 1001.36 within 90 days from the remittitur. If the trial court determines that defendant is eligible for diversion, the court should grant diversion and, if the defendant successfully

completes diversion, defendant's charges shall be dismissed. If, however, the trial court concludes that defendant is not eligible for diversion or defendant fails to complete diversion, his conviction and sentence shall be reinstated.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.